

1628. February 22. ANDERSON *against* GORDON.

IN an action to make arrested goods furthcoming, betwixt Anderson, pursuer, and Gordon alleged debtor to Maxwell the pursuer's debtor, for making furthcoming to the pursuer a sum addebted by Gordon to Maxwell, and arrested by the pursuer in Gordon's hands, for payment of his debt owing by Maxwell, this Maxwell being at the horn, and his escheat disponed and gifted, and declared by a general declarator at the donatar's instance, before the executing of the arrestment at the pursuer's instance; and which donatar compar- ed in this process, and desired to be preferred to the creditor pursuer;—THE LORDS preferred the donatar to the creditor pursuer, in respect of the said general declarator obtained before the arrestment, albeit no special declarator was obtained by the donatar.

Act. *Mowat.*

Alt. *Cuninghame.*

Clerk, *Gibson.*

*Fol. Dic. v. I. p. 255. Durie, p. 348.*

1630. June 19. NISBET *against* LADY ABERCORN.

ONE Nisbet, creditor to the Lady, after sentence obtained against her by him, for payment of the debt, and after arrestment and sentence thereupon against her tenants for the same, the Lady's liferent is, after these decreets, dis- poned to Sir James Fullerton, falling by her excommunication and horning, whereat she remained year and day before the sentence upon arrestments at Nisbet's instance against her tenants; whereupon, in a double poinding, at the tenants instance against this Nisbet, and the donatar, which of them had right to the farms, the LORDS found, that albeit, the Lady was rebel year and day, before any sentence obtained by the creditor against her tenants, whereby the donatar claimed to be preferred to the creditor, seeing the King nor his donatar pay no debt, but the debt of the horning, whereupon the escheat is taken, and at the time of the expiring of the year, the duties of the rebel's lands pertain to the King, and not to any creditor thereafter arresting and obtaining sentence therefor: For he *alleged, hoc ipso momento*, after expiring of year and day instant- ly without declarator, the duties of the lands pertained to him, and could not be evicted by any other creditor thereafter arresting and obtaining decreet, albeit before the liferent was gifted and declared; seeing the matter ought not to be considered from the time of the gift and declarator, but from the time of the falling of the escheat. And the creditor *alleging*, That his arrestment and sentence, albeit after the horning year and day, yet being before both the gift and declarator, in respect of his diligence he ought to be preferred, seeing he had recovered sentence also against the rebel for the debt, before she was

No 37.

Found in conformity with No 35. p. 3641.

No 38.

Found in con- formity with Kirkness a- gainst For- ster, No 35. p. 3641.